

CHAPTER 139

AN ACT concerning inspections under the construction code and amending P.L.1975, c.217 and P.L.1999, c.440.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 6 of P.L.1975, c.217 (C.52:27D-124) is amended to read as follows:

C.52:27D-124 Powers of the commissioner.

6. The commissioner shall have all the powers necessary or convenient to effectuate the purposes of P.L.1975, c.217 (C.52:27D-119 et seq.), including, but not limited to, the following powers in addition to all others granted by P.L.1975, c.217 (C.52:27D-119 et seq.):

a. To adopt, amend and repeal, after consultation with the code advisory board, rules: (1) relating to the administration and enforcement of P.L.1975, c.217 (C.52:27D-119 et seq.) and (2) the qualifications or licensing, or both, of all persons employed by enforcing agencies of the State to enforce P.L.1975, c.217 (C.52:27D-119 et seq.) or the code, except that, plumbing inspectors shall be subject to the rules adopted by the commissioner only insofar as such rules are compatible with such rules and regulations, regarding health and plumbing for public and private buildings, as may be promulgated by the Public Health Council in accordance with Title 26 of the Revised Statutes.

b. To enter into agreements with federal and State of New Jersey agencies, after consultation with the code advisory board, to provide insofar as practicable (1) single-agency review of construction plans and inspection of construction and (2) intergovernmental acceptance of such review and inspection to avoid unnecessary duplication of effort and fees. The commissioner shall have the power to enter into such agreements although the federal standards are not identical with State standards; provided that the same basic objectives are met. The commissioner shall have the power through such agreements to bind the State of New Jersey and all governmental entities deriving authority therefrom.

c. To take testimony and hold hearings relating to any aspect of or matter relating to the administration or enforcement of P.L.1975, c.217 (C.52:27D-119 et seq.), including but not limited to prospective interpretation of the code so as to resolve inconsistent or conflicting code interpretations, and, in connection therewith, issue subpoenas to compel the attendance of witnesses and the production of evidence. The commissioner may designate one or more hearing examiners to hold public hearings and report on such hearings to the commissioner.

d. To encourage, support or conduct, after consultation with the code advisory board, educational and training programs for employees, agents and inspectors of enforcing agencies, either through the Department of Community Affairs or in cooperation with other departments of State government, enforcing agencies, educational institutions, or associations of code officials.

e. To study the effect of P.L.1975, c.217 (C.52:27D-119 et seq.) and the code to ascertain their effect upon the cost of building construction and maintenance, and the effectiveness of their provisions for insuring the health, safety, and welfare of the people of the State of New Jersey.

f. To make, establish and amend, after consultation with the code advisory board, such rules as may be necessary, desirable or proper to carry out his powers and duties under P.L.1975, c.217 (C.52:27D-119 et seq.).

g. To adopt, amend, and repeal rules and regulations providing for the charging of and setting the amount of fees for the following code enforcement services, licenses or approvals performed or issued by the department, pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.):

(1) Plan review, construction permits, certificates of occupancy, demolition permits, moving of building permits, elevator permits and sign permits; and

(2) Review of applications for and the issuance of licenses certifying an individual's qualifications to act as a construction code official, subcode official or assistant under P.L.1975, c.217 (C.52:27D-119 et seq.).

(3) (Deleted by amendment, P.L.1983, c.338)

h. To adopt, amend and repeal rules and regulations providing for the charging of and setting the amount of construction permit surcharge fees to be collected by the enforcing agency and remitted to the department to support those activities which may be undertaken with moneys credited to the Uniform Construction Code Revolving Fund.

i. To adopt, amend and repeal rules and regulations providing for:

(1) Setting the amount of and the charging of fees to be paid to the department by a private agency for the review of applications for and the issuance of approvals authorizing a private agency to act as an on-site inspection and plan review agency, a private on-site inspection agency, including a supplemental private on-site inspection agency, or an in-plant inspection agency;

(2) (Deleted by amendment, P.L.2005, c.212)

(3) (Deleted by amendment, P.L.2005, c.212)

j. To enforce and administer the provisions of the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) and the code promulgated thereunder, and to prosecute or cause to be prosecuted violators of the provisions of that act or the code promulgated thereunder in administrative hearings and in civil proceedings in State and local courts.

k. To monitor the compliance of local enforcing agencies with the provisions of the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.), to order corrective action, or issue penalties, as may be necessary where a local enforcing agency is found to be failing to carry out its responsibilities under that act, to supplant or replace the local enforcing agency for a specific project, and to order it dissolved and replaced by the department where the local enforcing agency repeatedly or habitually fails to enforce the provisions of the "State Uniform Construction Code Act." This shall include the power to compel an enforcing agency to, within 15 business days, notify the department of any instance where the enforcing agency is unable to meet a deadline or other obligation imposed by law or regulation, and the power to order corrective action or issue penalties as may be necessary where an enforcing agency is unable to meet its obligations under P.L.1975, c.217 (C.52:27D-119 et seq.).

l. To adopt, amend, and repeal rules and regulations implementing the provisions of P.L.1999, c.15, P.L.2003, c.44, and section 1 of P.L.2015, c.146 (C.52:27D-123f) concerning the installation and maintenance of carbon monoxide sensors.

2. Section 14 of P.L.1975, c.217 (C.52:27D-132) is amended to read as follows:

C.52:27D-132 Inspection of construction by enforcing agency; right of entry; stop construction orders; violations, reinspection.

14. a. The enforcing agency shall periodically inspect all construction undertaken pursuant to a construction permit issued by it to ensure that the construction or alteration is performed in accordance with the conditions of the construction permit and consistent with the requirements of the code and any ordinance implementing said code.

b. The owner of any premises upon which a building or structure is being constructed shall be deemed to have consented to the inspection by the enforcing agency and the department, of

the entire premises and of any and all construction being performed on it until a certificate of occupancy has been issued. An inspector, or team of inspectors, on presentation of proper credentials, shall have the right to enter and inspect such premises, and any and all construction thereon, for purposes of ensuring compliance with the provisions of the applicable construction permit, the code, and other applicable laws and regulations. All inspection pursuant to P.L.1975, c.217 (C.52:27D-119 et seq.) shall be between the hours of 9 a.m. and 5 p.m. on business days or at another time that has been agreed upon by the owner and the relevant inspecting entity, whether the enforcing agency, department, or private on-site inspection agency, or when construction is actually being undertaken, provided, however, that inspections may be conducted at other times if the enforcing agency has reasonable cause to believe that an immediate danger to life, limb or property exists, or if permission is given by an owner, or the owner's agent, architect, engineer or builder. No person shall accompany an inspector or team of inspectors on any inspection pursuant to P.L.1975, c.217 (C.52:27D-119 et seq.), unless the person's presence is necessary for the enforcement of P.L.1975, c.217 (C.52:27D-119 et seq.), or the code, or unless consent is given by an owner or the owner's agent, architect, engineer or builder.

c. If the construction of a structure or building is being undertaken contrary to the provisions of a construction permit, P.L.1975, c.217 (C.52:27D-119 et seq.), the code, or other applicable laws or ordinances, the enforcing agency may issue a stop construction order in writing which shall state the conditions upon which construction may be resumed and which shall be given to the owner or the holder of the construction permit or to the person performing the construction. If the person doing the construction is not known, or cannot be located with reasonable effort, the notice may be delivered to the person in charge of, or apparently in charge of, the construction. No person shall continue, or cause or allow to be continued, the construction of a building or structure in violation of a stop construction order, except with the permission of the enforcing agency to abate a dangerous condition or remove a violation, or except by court order. If an order to stop construction is not obeyed, the enforcing agency may apply to the appropriate court as otherwise established by law for an order enjoining the violation of the stop construction order. The remedy for violation of such an order provided in this subsection shall be in addition to, and not in limitation of, any other remedies provided by law or ordinance.

d. When an inspector or team of inspectors finds a violation of the provisions of a construction permit, the code, or other applicable laws and regulations at an owner-occupied single-family residence, and issues a notice of violation and an order to terminate the violation, the enforcing agency shall require the same inspector or team of inspectors who found the violation to undertake any subsequent reinspection thereof at the premises. When the same inspector or team of inspectors cannot be assigned to undertake the reinspection, the enforcing agency may assign an available inspector provided the scope of the reinspection shall be limited to the violation for which the reinspection is required. The requirements of this subsection shall not apply to violations of the plumbing or electrical subcodes, or to fire safety code violations, or to any violation of any other subcode that the Department of Community Affairs determines to be a health or safety violation. Nothing in this subsection shall be construed to infringe upon the right of a property owner to request a different inspector, team of inspectors, or supervisor, to perform any required reinspection.

e. The owner, agent, or other responsible person in charge of work shall notify the enforcing agency when the work is ready for any required inspection under the code. This notice shall be given in writing at least 24 hours prior to the date and time requested for the inspection. The enforcing agency shall perform an inspection within three business days of

the date for which the inspection is requested. The owner, agent, or other responsible person in charge of work may provide oral notice for inspections of minor work projects, as defined by the code.

(1) The owner, agent, or other responsible person in charge of work shall be present and prepared at the time of any inspection that has been scheduled upon the owner, agent, or other responsible person's request. A failure by the owner, agent, or other responsible person in charge of work to be present and prepared for inspection shall be considered a failed inspection.

(2) If the enforcing agency is unable to perform a requested inspection within three business days of the date for which the inspection is requested, the enforcing agency shall inform the owner, agent, or other responsible person in charge of work in writing within 24 hours of receiving the request, at which time the enforcing agency and the owner, agent, or other responsible person in charge of work may agree to a different date and time for inspection. The enforcing agency shall commit the agreed upon inspection date to writing and provide a copy to the owner, agent, or other responsible person in charge of work.

(3) If the enforcing agency is unable to perform the requested inspection within three business days of the date for which the inspection is requested and the enforcing agency and the owner, agent, or responsible person in charge of work are unable to come to an agreement pursuant to paragraph (2) of this subsection, the owner, agent, or other responsible person in charge of work may choose to contract with a private on-site inspection agency authorized by the department to conduct on-site inspections pursuant to paragraph i. of section 6 of P.L.1975, c.217 (C.52:27D-124) to perform the requested inspection or inspections.

(a) The owner, agent, or other responsible person in charge of work shall notify the enforcing agency in writing of any choice to utilize an authorized private on-site inspection agency to conduct the requested inspection or inspections.

(b) The owner, agent, or other responsible person in charge of work may elect to utilize the private on-site inspection agency to conduct all subsequent associated inspections. In the event of a project with multiple units in one building, this provision shall apply to the specific unit or units affected by the inspection delay.

(c) The use of a private on-site inspection agency by an owner, agent, or other responsible person for on-site inspections shall be subject to the conflict-of-interest provisions in the code. In addition to those requirements, no private on-site inspection agency shall perform an inspection for any owner, agent, or other responsible person in charge of work, if an owner, agent, or other responsible person is currently employed by or affiliated with any individual affiliated with the private on-site inspection agency or has employed or was associated with an individual affiliated with the private on-site inspection agency within a timeframe established by the commissioner by regulation.

(d) The enforcing agency shall, if warranted, provide a fee reconciliation to the owner for an inspection completed by a private on-site inspection agency as a result of a missed inspection. The enforcing agency shall perform the reconciliation at the conclusion of the project. This reconciliation shall be based on the fees already paid less administrative costs for the enforcing agency and shall not exceed the amount already paid for the project, nor shall it exceed the amount that the enforcing agency is authorized to impose for inspections, and shall take into account the administrative costs of the enforcing agency.

(4) If the owner, agent, or other responsible person in charge of work believes an enforcing agency has demonstrated a repeated inability to conduct inspections for a construction project within the timelines required by this section, as established by the commissioner by regulation, the owner, agent, or other responsible person in charge of work may notify the department in writing to request authorization to utilize an authorized private on-site inspection agency.

Within 15 business days of receiving a notification under this paragraph, the department shall determine whether the enforcing agency has demonstrated repeated inability, and, if the department determines, shall authorize the owner, agent, or other responsible person in charge of work to utilize an authorized private on-site inspection agency for all or a portion of the necessary inspections for the remainder of the project.

f. Each enforcing agency shall establish a process for ensuring inspections are performed within three business days of a requested inspection date, as required by subsection e. of this section. Authorized processes include, but are not limited to, the use of supplemental shared services agreements with other municipalities or enforcing agencies or the use of contracted private on-site inspection agencies, including supplemental private on-site inspection agencies.

g. (1) At timeframes established by the commissioner by regulation, adopted in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the municipal construction official shall submit an annual report detailing compliance with the code. The report shall include, at a minimum information related to the staffing, staff titles, and expenses of the enforcing agency, in addition to any other information required by the commissioner. The annual report shall take into account projected work and agency resource needs for the next budget year.

(2) A municipality that enters into a contract for supplemental services pursuant to subsection f. of this section shall provide a copy of the contract to the department upon entering into the contract.

(3) The information required by paragraphs (1) and (2) of this subsection, in addition to the inspection log, the municipal monthly activity reports, and the fee schedule shall be maintained by the municipal construction official or enforcing agency, and the municipal construction official or enforcing agency shall make the information and documents described in this paragraph available to the department upon request.

(4) The department may utilize the information provided pursuant to this subsection to determine appropriate staffing levels for the enforcing agency. If the department determines that an enforcing agency has not maintained appropriate staffing levels, the department may require the municipality to take corrective actions to ensure that the enforcing agency's staffing needs are met.

(5) The department may take corrective action, including the issuance of penalties, pursuant to subsection k. of section 6 of P.L.1975, c.217 (C.52:27D-124), if an enforcing agency fails to maintain or provide the information required by this subsection or maintain appropriate staffing levels, as determined by the department pursuant to paragraph (4) of this subsection.

h. If an enforcing agency is unable to meet its obligations under P.L.1975, c.217 (C.52:27D-119 et seq.), the enforcing agency shall promptly notify the department within 15 business days. The department may take corrective action, including the issuance of penalties, pursuant to subsection k. of section 6 of P.L.1975, c.217 (C.52:27D-124) if an enforcing agency fails to meet its obligations under P.L.1975, c.217 (C.52:27D-119 et seq.).

3. Section 1 of P.L.1999, c.440 (C.40A:11-4.1) is amended to read as follows:

C.40A:11-4.1 Purposes for which competitive contracting may be used by local units.

1. Notwithstanding the provisions of any law, rule, or regulation to the contrary, competitive contracting may be used by local contracting units in lieu of public bidding for procurement of specialized goods and services the price of which exceeds the bid threshold, for the following purposes:

a. The purchase or licensing of proprietary computer software designed for contracting unit purposes, which may include hardware intended for use with the proprietary software. This subsection shall not be utilized for the purpose of acquiring general purpose computer hardware or software;

b. The hiring of a for-profit entity or a not-for-profit entity incorporated under Title 15A of the New Jersey Statutes for the purpose of:

(1) the operation and management of a wastewater treatment system, a stormwater management system, or a water supply or distribution facility of the type described in subsection (37) of section 15 of P.L.1971, c.198 (C.40A:11-15), provided that competitive contracting shall not be used as a means of awarding contracts pursuant to P.L.1985, c.37 (C.58:26-1 et al.) and P.L.1985, c.72 (C.58:27-1 et al.);

(2) the operation, management or administration of recreation or social service facilities or programs, which shall not include the administration of benefits under the Work First New Jersey program established pursuant to P.L.1997, c.38 (C.44:10-55 et seq.), or under General Assistance;

(3) the operation, management or administration of data processing services; or

(4) the operation and management of a county hospital pursuant to the "Local Hospital Authority Law," P.L.2006, c.46 (C.30:9-23.15 et al.);

c. (Deleted by amendment, P.L.2009, c.4)

d. Homemaker--home health services;

e. Laboratory testing services;

f. Emergency medical services;

g. Contracted food services;

h. Performance of patient care services by contracted medical staff at county hospitals, correctional facilities and long-term care facilities;

i. At the option of the governing body of the contracting unit, any good or service that is exempt from bidding pursuant to section 5 of P.L.1971, c.198 (C.40A:11-5);

j. Concessions;

k. The operation, management or administration of other services, with the approval of the Director of the Division of Local Government Services;

l. Maintenance, custodial, and groundskeeping services;

m. Consulting services;

n. Emergency medical billing services;

o. Property appraisal services;

p. Reassessment or revaluation services;

q. Grant writing services;

r. Animal control services;

s. Private on-site inspection agency services, as may be authorized by rules and regulations adopted by the Department of Community Affairs.

Any purpose included herein shall not be considered by a contracting unit as an extraordinary unspecifiable service pursuant to subparagraph (ii) of paragraph (a) of subsection (1) of section 5 of P.L.1971, c.198 (C.40A:11-5).

As used in this section, "stormwater management system" means the same as that term is defined in section 3 of P.L.2019, c.42 (C.40A:26B-3).

C.52:27D-132.1 Rules, regulations.

4. In accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the commissioner shall propose within six months and adopt within nine months rules

and regulations to effectuate the provisions of P.L.2022, c.139 (C.52:27D-132.1 et al.), including rules that provide for: the use of supplemental shared services agreements; the authorization of private on-site inspection agencies by the department to conduct on-site inspections; and the use of private on-site inspection agencies by municipalities and enforcing agencies. In addition to the activity described in subparagraph (b) of paragraph (3) of subsection e. of section 14 of P.L.1975, c.217 (C.52:27D-132), the rules and regulations shall allow an enforcing agency to:

- a. enter into a supplemental shared service agreement or contract with a supplemental private on-site inspection agency to conduct an on-site inspection for the purpose of meeting all required inspection timeframes;
- b. enter into an agreement with a private on-site inspection agency to conduct an on-site inspection on a project-specific basis; and
- c. authorize the owner, agent, or other authorized person in charge of work to directly contract with an authorized private on-site inspection agency to perform all inspections on a project-specific basis.

5. Sections 1 through 3 of this act shall take effect immediately upon the adoption of the rules and regulations by the Department of Community Affairs to effectuate the provisions of this act, provided, however, that the Department of Community Affairs shall take anticipatory action as necessary to prepare for the implementation of the provisions of this act. Section 4 of this act shall take effect immediately.

Approved January 5, 2023.